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EX PARTE OR LATE FILED

February 12, 1997

HAND-DELIVERED

Federal Communications Commission
Office of the Secretary
1919 M Street, N.W.
Room 222
Washington, D.C 20554

Re: Notice of Oral Ex Parte Presentation; PR Docket No. 93-144, GN Docket No. 93-252 and PP Docket No. 93-253

Dear Mr. Caton:

This is to notify the Office of the Secretary that Christine Gill and Thomas Navin, attorneys with the law firm of McDermott, Will & Emery ("Southern's attorneys"), on behalf of its client, The Southern Company ("Southern"), made an oral ex parte presentation to Jeff Steinberg, Special Counsel, Commercial Wireless Division, Karen Brinkmann, Associate Bureau Chief, and Walter Strack, Chief Economist, of the Wireless Bureau ("FCC staff").

The substance of Southern's attorneys' conversation with the FCC staff concerned the issues addressed in Southern's Response to Request For Rejustification of Extended Implementation Authority filed in the above-captioned proceeding. A copy of Southern's filing without the associated exhibits is being filed in duplicate with this notice.

In accordance with the Section 1.1206 of the Federal Communications Commission rules, a copy of this notice and its

attachments have been hand-delivered to Mr. Steinberg, Ms. Brinkmann and Mr. Strack.

Very truly yours,

Christine Gill/191

Christine C. Gill

cc: Jeff Steinberg
Karen Brinkmann
Walter Strack

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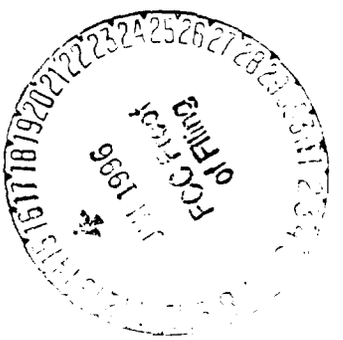
July 15, 1996



VIA HAND DELIVERY

Terry L. Fishel, Chief
Land Mobile Branch, Licensing Division
Wireless Telecommunications Bureau
Federal Communications Commission
1270 Fairfield Road
Gettysburg, Pennsylvania 17325-7245

Re: The Southern Company ("Southern"); Response to Request for Rejustification of Extended Implementation Authority

Dear Mr. Fishel:

We are submitting herewith, on behalf of our client, The Southern Company, the above-referenced pleading involving Southern's slow growth status.

If any questions arise concerning this filing, please contact the undersigned.

Very truly yours,

Carole C. Harris

Enclosures

cc: David Furth, Esquire (hand delivered)

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band	)	PR Docket No. 93-144
and		
Implementation of Section 309(j) of the Communications Act - Competitive Bidding 800 MHz SMR	)	PP Docket No. 93-253

To: The Wireless Telecommunications Bureau
Licensing Division

RESPONSE TO REQUEST FOR REJUSTIFICATION OF EXTENDED IMPLEMENTATION AUTHORITY OF THE SOUTHERN COMPANY

By: Carole C. Harris
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Tamara Y. Davis
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1850 K Street, N.W.
Washington, D.C. 20006

202-887-8000

Its Attorneys

Dated: July 15, 1996

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band	)	PR Docket No. 93-144
	)	
and		
Implementation Section of 309(j) of the Communications Act - Competitive Bidding 800 MHz SMR	)	PP Docket No. 93-253

To: The Wireless Telecommunications Bureau
Licensing Division

RESPONSE TO REQUEST FOR REJUSTIFICATION OF EXTENDED IMPLEMENTATION AUTHORITY OF THE SOUTHERN COMPANY

The Southern Company ("Southern"), through its undersigned counsel and pursuant to the First Report and Order in the above-captioned rulemaking proceeding adopted by the Federal Communications Commission ("Commission" or "FCC"), respectfully submits the following in response to the Commission's Request for Rejustification of its extended implementation authority.[1/]

[1/] In the Matter of Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band and Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PR Docket No. 93-
(continued...)

Also filed pursuant to the Public Notice are five exhibits which are appended to this Response. Exhibit A is divided by state, and lists various information concerning Southern's primary station call signs. Exhibit B provides the extended implementation request and FCC approval. Exhibit C includes the currently due annual certification, the prior filed certification, and a certification that all required annual certifications were timely submitted. Exhibit D lists all of the base stations and frequencies operating under Southern's temporary base station authorization. Exhibit E is a coverage map of Southern's wide-area footprint.

I. OVERVIEW

1. Southern operates a unique digitally-enhanced, wide-area Specialized Mobile Radio ("SMR") system. As of August 10, 1996 the system will be classified as a Commercial Mobile Radio Service (CMRS) system.[2/] In terms of coverage, Southern's SMR system is the largest, centrally switched state-of-the-art digital 800 MHz SMR system constructed and operational in the world. As of the date of this filing, Southern has 301 base

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[1/](...continued)
144 and PP Docket 93-253, First Report and Order, Eighth Report and Order, and Second Notice of Proposed Rule Making, adopted December 15, 1995, 61 Fed. Reg. 6212 (1996), Public Notice providing recommended filing format for rejustification of extended implementation authority released June 4, 1996, and Order extending the filing deadline to July 15, 1996, adopted June 13, 1996.

[2/] 9 FCC Rcd. 1411 (1994).

station sites constructed and in operation. An additional 9 sites will be constructed by the end of the year. Southern employs Industrial/ Land Transportation, General Category, Business and SMR (mostly the lower 80 and some upper 200) channels to meet its system spectrum requirements.

2. Because of the type of radio technology used by Southern -- digitally-enhanced, time division multiple access ("TDMA") -- it anticipates that 400 sites may be needed to adequately cover its authorized service area, which is somewhat larger than Southern's 120,000 square-mile utility service territory. To date, Southern has invested over $143 million to design, develop and construct its wide-area SMR system.

3. Southern's wide-area SMR system employs Motorola's Integrated Dispatch Enhanced Network ("iDEN") technology.[3/] The service emphasizes high reliability as is required for public utility operations. Southern's system provides true wide-area coverage including coverage in the most rural areas of the South. Southern's customers in Collins, Mississippi, Camden, Alabama and Cairo, Georgia have the same advanced digital service available to them on Southern's system as customers in more metropolitan areas such as Atlanta, Georgia and Birmingham, Alabama. As of June 30, 1996, Southern's wide-area SMR system served

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[3/] The identical technology is being used by Nextel in the Southeastern U.S., the Los Angeles market and parts of the mid-West.

approximately 10,200 internal utility system users and 5,400 external customers. Hundreds of new external customers are added to the system on a monthly basis. In June 1996 alone, 1,490 external users were added to the system. The numbers of external users are impressive considering that Southern launched its commercial operations less than six months ago, in February 1996.

4. The Southern wide-area SMR system is designed to meet the high reliability standards required for prudent electric utility operations. As described in detail below, the necessity that Southern meet the actual wide-area service needs of large integrated electric utilities has imposed unique requirements upon the construction of its wide-area SMR system. These demands amplified the delays always inherent in deploying an evolving radio communications technology.

II. RELIEF REQUESTED

5. Because of the mandate of the Omnibus Budget Reconciliation Act of 1993 ("1993 Budget Act"), Southern believes that it is statutorily entitled to regulatory parity with other CMRS providers in terms of construction requirements. Based on regulatory parity, Southern seeks to have applied to it a construction standard similar to that being afforded to the wide-area EA SMR auction winners, and other CMRS entities such as Personal Communications Service ("PCS") and cellular

providers.[4/] The construction requirements should apply system-wide to Southern because it operates within a single, integrated wide-area footprint[5/] which covers 120,000 square miles in the southeastern United States, which does not neatly fit the EA regime recently defined by the Commission in this docket or the MTA or BTA categories which apply to other CMRS entities.

6. Southern currently serves over 90 percent of the population in its SMR coverage area.[6/] It has constructed 224 discrete channels of its 341 discrete channel total. This 341 channel figure includes licensed channels and "pending" SMR frequencies listed on the October 31, 1995 Public Notice.[7/] Thus, Southern has constructed well over 50 percent of the 800 MHz discrete channels licensed in this SMR system. Southern has not yet constructed every channel at every location at which

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[4/] Broadband PCS licensees of the 30 MHz blocks are required to provide service to one-third of the population of their Metropolitan Trading Area within five years of license grant, and two-thirds of the population after ten years. Broadband PCS licensees of the 10 MHz blocks need only serve one-quarter of the population of their Basic Trading Area within five years of license grant. Cellular systems have a self-defined service area, with no population-based construction benchmarks. Further, there are no minimum channel construction requirements.

[5/] See Exhibit E, System Coverage Map.

[6/] Southern now serves 100% of the population in its electric service territory. Under its public utility system obligations and consistent with the Order of Securities and Exchange Commission (referenced at footnote 7), Southern was required to build-out its utility service area first.

[7/] See, Wireless Bureau Vacates and Supersedes Grants to SMRs Announced by March 17, 1995 Public Notice, Public Notice No. 52823 (October 31, 1995).

that channel may be licensed. Moreover, because of the complexity of the emerging technology which caused several changes in the system roll out, Southern has constructed many channels at locations removed from its routinely licensed sites by using its temporary base station authorization.

7. As will be described in detail below, the Southern system involved a massive, highly complex construction project creating the largest advanced digital wireless system in the world. Despite the difficulties encountered in the implementation of this system, at a minimum, Southern has already exceeded the population coverage requirements that apply to other CMRS providers, and system-wide it has also exceeded the discrete channel construction requirements that will apply to EA winners as well.

8. Nevertheless, the Commission has requested that existing SMR companies rejustify their slow growth construction schedules. While Southern is providing service to over 90 percent of the population in its SMR service area, under the Commission's analog-based site-by-site, channel-by-channel construction rules, Southern is required to complete construction of every channel in its licensed system at every location by the end of its current slow growth schedule. This would mean that Southern would have to complete this construction in the Spring of 1998.

9. Southern requests that the Commission not apply site-by-site, channel-by-channel construction requirements to it, but rather that it apply a geographic and population coverage requirement similar to that under which future EA licensees will operate. As discussed in detail below, Southern believes that this equality of treatment is required by the Congressional mandate for regulatory parity among CMRS entities. Further, Southern will be severely disadvantaged if it is forced to live under the site-by-site, channel-by-channel construction regime when other CMRS competitors are not required to do so. As the Commission knows, SMR licensees in general have significantly less spectrum than CMRS entities such as PCS and cellular. For this reason, every kilohertz of spectrum is essential to the ability of an entity such as Southern to realistically compete in the CMRS marketplace. Although Southern has achieved a wide area coverage with its build-out of base stations throughout its service territory, it must have the flexibility to expand the system channel capacity to meet market demand rather than to meet a site-by-site, channel-by-channel schedule which under current law would undermine the mandate of regulatory parity.

10. The site-by-site, channel-by-channel construction rules made sense in the context of the SMR industry in its infancy. Originally, the rules contemplated small stand-alone systems, and allowed users to obtain spectrum in five channel increments only after fully constructing and loading their initial channels.

However, the model that the Commission moved to when it promoted digital wide-area systems is significantly different. In the first instance, a wide-area system such as Southern's requires an enormous capital investment to place the infrastructure for the initial system into operation. Southern's construction, which includes over 300 base stations, related infrastructure and switching technology, will require the investment of approximately $200 million. In addition, planning for future growth for a wide area system such as Southern's is difficult. The Commission has essentially recognized this fact in allowing other CMRS providers to meet more flexible population coverage and channel construction requirements so that the build-out of their systems can be accommodated in a rational manner dictated by market demand. Accordingly, under the CMRS rules, the Commission has appropriately decided not to implement regulations which would result in the agency micro-managing CMRS build-out. Southern needs this same construction flexibility.

11. Southern fully expects that demand for spectrum within the system footprint will be dynamic. For example, while Southern expects continued healthy subscriber growth in all areas, demand can be expected to be greatest initially in the urban areas. However, there will undoubtedly be peaks of demand in unexpected areas. If, for example, a major corporation decides to locate its operations in the rural part of Southern's service area, this will precipitate a greater demand for channel

capacity in this area immediately. Southern needs to be able to respond to these types of market demands in the same way other CMRS competitors are able to by constructing to meet demand rather than having to build out its system based on artificially-imposed regulatory requirements. Under existing site-by-site, channel-by-channel rules, Southern would have to devote substantially equal investments in all markets at the same time regardless of its business plans when its competitors would have a considerably less burdensome regulatory scheme.

12. Permitting this relief would not result in a case of spectrum warehousing. Southern has obviously demonstrated by its capital investment its commitment to providing state-of-the-art wide-area digital service. Given the size of its spectrum assets when compared to other CMRS providers, the Commission should not further disadvantage entities such as Southern by enforcing unequal construction requirements. The following provides further information for the Commission concerning the extent and nature of Southern's system, the complexity of the construction project and the legal basis for its request.

III. DESCRIPTION OF THE LICENSEE

13. The Southern Company is an electric public utility holding company organized under the Public Utility Holding Company Act of 1935. Based in Atlanta, Georgia, the holding company wholly owns the common stock of five electric utility

operating companies -- Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company. The Southern system will serve the internal communications needs of these five operating companies as well as external users. Collectively, the operating companies operate an integrated electric utility system which serves over 11 million consumers in a contiguous area of 120,000 square miles in four states, including most of Alabama, virtually all of Georgia, the panhandle of Florida and 23 counties in southeastern Mississippi.

14. In late December of 1994, the Securities and Exchange Commission approved the formation of Southern Communications Services, Inc., a wholly-owned subsidiary of The Southern Company, organized to provide land mobile radio service both to the affiliated operating companies and to the public on a commercial basis.[8/]

15. Because Southern's utility service area covers many rural areas in the southeast, Southern is committed to providing advanced digital SMR service to the public in these rural areas which generally are overlooked by other SMRs. Indeed, existing customers have confirmed that Southern is providing state-of-the-

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[8/] The Southern Company, Memorandum Opinion and Order, authorizing Acquisition of Non Utility Subsidiary and Related Transactions, Holding Co. Act Release No. 35-26211, December 30, 1994. (SEC Order).

art, wide-area SMR service in the rural parts of the southeastern region not offered by any other carrier. Moreover, Southern is committed to providing a communications system that meets the reliability standards of public utilities, federal, state, and local governments; transportation and emergency management agencies.

IV. DESCRIPTION OF THE 800 MHZ WIDE-AREA SMR SYSTEM

A. Background

16. Southern's wide-area SMR system was built to provide a fully-integrated communications network for its utility system. For example, during emergency situations, like Hurricanes Opal and Erin which hit the Gulf Coast region, personnel from the other operating companies were deployed to assist Gulf Power in its efforts to restore electrical power service to its customers.[9/] In situations such as these, it is critical that the operating companies utilize an integrated communications network. Heretofore, the operating companies were each using communications systems in different and incompatible frequency bands. Southern's wide-area 800 MHz SMR system replaced the patchwork of parochial systems the operating companies were previously using. A move to a fully-integrated communications

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[9/] During the particularly violent 1995 hurricane season, the coverage and reliability of the Southern system was amply demonstrated. In the immediate aftermath of Hurricane Opal, Southern's system was the only telephone service operating in parts of the Alabama and Florida coast where wireline and cellular service were disabled.

system at 800 MHz was absolutely essential, and indeed beneficial during Hurricanes Opal and Erin, resulting in economies of scale for both the holding company and operating companies.

B. System Technology

17. Southern's wide-area SMR system employs Motorola's TDMA technology, referred to iDEN, which to date is the only commercially available, digital 800 MHz SMR technology. This technology allows the transmission of six sets of voice communications simultaneously on a single channel, and central processing of the communications for efficient spectrum use.

18. Southern's wide-area SMR system not only provides voice dispatch service but also full-duplex telephone interconnect, short message service (similar to alphanumeric paging) and data transmission capabilities. Each of these functions can be accessed by using a single mobile or handheld radio unit.

C. System Infrastructure

19. As mentioned above, Southern first designed its wide-area SMR system to meet internal communications needs for all five utility operating companies. Since the operating companies' service territories span significant rural areas, redundant communications are critical to the safe and efficient distribution of electrical power to these areas. Accordingly, Southern designed its transmitter sites with special security

features, and some ninety percent are equipped with backup batteries and on-site power generators.

20. The central processing feature of the iDEN technology imposes an additional system design requirement, namely a backhaul network used for call routing through dispatch application processors and a central switching center located in Birmingham, Alabama. The infrastructure used to carry backhaul traffic includes point-to-point microwave, fiber optics and leased telephone lines.

D. Service Area

21. The SEC Order governs the current scope of Southern's geographic service area. The SEC Order gives Southern the ability to expand on a limited basis its geographic service area once the utility service territory is adequately covered.[10/] Neither its operating territory nor its expansion areas correspond with the FCC's new geographic licensing areas for wide-area SMR licensees, namely, EAs. Indeed, Southern's 120,000-square mile SMR footprint includes some or part of 22 EAs. Consequently, Southern does not have the authority to provide commercial SMR service throughout each EA in its territory. Moreover, to date, Southern has not undertaken to construct in its expansion areas.

10/ SEC Order at 4, n. 10.

V. COMPLEXITY, SIZE AND SCOPE OF SOUTHERN'S 800 MHZ SMR SYSTEM RESULTED IN CONSTRUCTION DELAYS AND RECONFIGURATIONS

22. Southern's system is the largest integrated digital system that has been constructed anywhere in the world. Because of this and the nascency of the digital radio technology, design and construction of the system were extraordinarily complex, presenting many unprecedented engineering problems that had to be solved while the project was underway.

A. Base Station Site Delays

23. The FCC began granting the first licenses for Southern's 800 MHz wide-area SMR system in May 1993. Southern made plans to begin construction of its various SMR sites regionwide, and contracted with Motorola to purchase radio equipment for this system even though Motorola's technology was still under development. This technology was then referred to as the Motorola Integrated Radio System ("MIRS"). Despite the fact that the system design was not finalized, Southern had to commit to purchasing towers and choosing licensing sites for its base station locations.

24. The critical dilemma that Southern faced during its construction process was the fundamental RF coverage characteristics of its new digital technology. At the time of the original RF design for the Southern system, very little empirical data was available with respect to TDMA digital RF

propagation characteristics. Theoretical propagation modeling tools employed assumptions about such factors as terrain, foliage, antenna performance, etc. that in some cases were inaccurate. This was due to the fact that there was inadequate data to validate the initial assumptions, and in part due to the unique and widely varying geographic characteristics of the Southern service area.

25. During the process of constructing Southern's TDMA digital RF network in 1994, new empirical data became available that suggested up to 30 percent additional cell sites were necessary to adequately provide RF coverage to match business plan expectations. The process of redesigning the RF network caused a redistribution of the originally planned 231 cell sites plus the construction of approximately 69 additional cells to meet the original coverage expectations for the system for the initiation of commercial operations. Recognizing that the coordinates listed on the authorizations were not necessarily the required locations for its final system design and construction, Southern discussed this situation with the Federal Communications Commission staff and, accordingly, it applied for and was granted a temporary base station authorization for its wide-area SMR system on June 23, 1994.[11/]

[11/] Because of the design problems, Southern most often had to construct its base stations at locations different than its originally licensed sites. It operates these sites under its temporary base station license and it is in the process of modifying its licenses to reflect these permanent locations.

26. The process of procuring new sites, securing necessary planning, zoning and building permits and the construction of transport facilities to link the sites back to the host switching center caused an approximate one-year delay in the targeted commercial service date for the system.

27. During the period of February through early August 1995, it became necessary for Southern and Motorola to renegotiate the infrastructure equipment contract to take into account various changes in the system design and cost. During this period construction was halted. Upon resolution of all contract issues in early August 1995, system construction was recommenced. The system was finally put into commercial service in early February 1996. As of July 1, 1996, there are 301 operational cell sites on the system covering approximately 120,000 square miles of service territory.

B. Infrastructure Delays

28. Southern's business goal in selecting Motorola's iDEN technology was to construct and operate a single homogenous TDMA digital wireless network to serve all of its electric utility affiliates as well as the commercial market. The iDEN system was to replace several stand-alone, non-linked analog wireless systems serving the affiliated electric utility companies. To meet this goal, certain features and functions of the iDEN system needed to be enhanced and overall system reliability performance

needed to be demonstrated. This contributed to delays in implementation of commercial service of approximately 12 months. These modifications included improvements to the central processing in order to integrate the increased number of base stations into a single wide area system, modifications to improve coverages in rural areas, and features important to electric utility operations, including emergency notification, dispatch queuing priority and scanning dispatch talk groups.

29. Because of Southern's extensive service area, achieving a system integrated to a single switch required working with diverse service providers including rural telephone companies. The advanced digital technology of Southern's system required a full T-1 circuit to each cell site to carry traffic back to the main switch. T-1 digital service was not commonly available from service providers in many parts of Southern's extensive service area. Nevertheless, Southern had to procure the T-1 capacity at each cell site either from an existing service provider or through constructing the facilities itself using broadband microwave. Since the T-1 capacity was not readily available, the task of tying the system together with this type of circuitry became enormously complex and time consuming.

C. Miscellaneous Construction Delays

30. When Hurricanes Opal and Erin hit the Gulf Coast region, the resources devoted to construction and implementation of the wide-area SMR system were diverted to support the restoration of electric power in this region. Construction had to be delayed on these two occasions. Additionally, Southern faced administrative delays in receiving Federal Aviation Administration, U.S. Forestry Service and local zoning approvals to construct certain sites. Because of the size and complexity of the system and the need for exponentially more sites than a traditional analog system, Southern's administrative delays were multiplied.

VI. GRANTING CONSTRUCTION PARITY TO SOUTHERN PROMOTES NATIONAL PRO-COMPETITIVE POLICIES AND FOSTERS THE PROVISION OF ADVANCED TELECOMMUNICATIONS SERVICES IN RURAL AREAS

31. The 1993 Budget Act requires the Federal Communications Commission to impose "regulatory parity" on providers of commercial mobile radio services. Based on this mandate, the Commission expressed its concern that excessive aggregation by any one, or several, CMRS licensees could reduce competition and confer excessive market power on incumbents.[12/]

[12/] CMRS Third Report and Order, ¶ 240. Accordingly, as codified in Section 20.6, no licensee regulated in the broadband PCS, cellular, or SMR services as CMRS, may have an attributable interest in a total of more than 45 MHz of licensed CMRS spectrum with significant overlap in any geographic area. ¶¶ 240 and 248. Importantly, in implementing the spectrum cap, the Commission noted "the lack of a spectrum cap could undermine other goals of (continued...)

32. The size, scope and variety of services offered by Southern, as described earlier in this pleading, constitutes a vital resource that enhances competition within Southern's operating area. In Southern's footprint, it is the only provider of digital enhanced services to both urban and rural areas. Accordingly, the Commission should grant Southern the construction parity requested so that the businesses and population in Southern's vast operating territory can be afforded today a meaningful choice of wireless telecommunications service offerings.[13/]

33. Both the telecommunications trade press and the general press have recognized that the Southern system is the nation's largest integrated wide area digital wireless telecommunications network. Southern's system is a strong competitor to the other wide-area SMR provider in the southeast, the Nextel/Dial Call merged operation. Southern's digital system is currently competing with Nextel/Dial Call on a head-to-head basis in

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[12/] (...continued)
the Budget Act, such as the avoidance of excessive concentration of licenses and the dissemination of licenses among a wide variety of applicants." CMRS Third Report and Order, ¶ 248.

[13/] Section 309(j)(3) of the Communications Act, as amended by 1993 Budget Act, is concerned with ensuring that new and innovative technologies are readily available to the American people. Other provisions of 1993 Budget Act are concerned with the equities of rural telephone companies and the vital role these companies play in providing telecommunications service to the nation's vast expanses of non-urbanized territory. Southern respectfully submits that the legislative mandates of "ready availability" and comprehensive service to rural areas are best achieved by granting Southern the construction parity requested.